

The response of September 20, 2004, treated as a petition under 37 CFR 1.182, was dismissed on October 25, 2004. A petition fee of \$130 was charged to the deposit account of Applicant's representative.

On December 3, 2004, Applicant filed a petition under 37 CFR 1.183, "in the interest of justice", to suspend or waive any requirement of the signatures of both assignees or their legal representative(s) to prosecute the above-identified application.

The decision granting that petition on January 6, 2005 is attached herewith. The application was forwarded to Technology Center 3751 for further examination in due course.

On January 26, 2005, Technology Center 3751 mailed a communication indicating that the proposed reply filed on September 20, 2004 had not been entered because it was not properly signed by joint inventor (Mr. Lovell).

However, as indicated above by the granted petition of January 6, 2005, Mr. Lovell's signature is not required on the response.

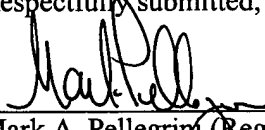
Accordingly, please find attached a copy of the response originally mailed on September 20, 2004 to the Election Requirement. Applicant believes no fees are due, as those fees were previously paid, see discussion above. However, in the event Applicant is incorrect, the Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2624.

If the Examiner has any questions regarding the foregoing, or would like to discuss any remaining or new issues, the Examiner is invited to contact the undersigned representative of Applicant at (949) 718-6750.

Date:

2/04/05

Respectfully submitted,

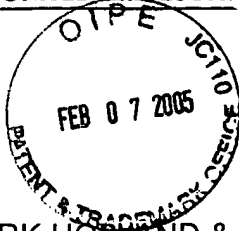


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Newport Beach, California 92660
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PTO Customer Number 21,259

MAP/dw

Enclosures: Transmittal, Response to Election Requirement, Petition Under 37 C.F.R. §1.183, Granted Petition and Return Receipt Postcard

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NEWPORT BEACH CA 92660

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JAN 06 2005

OFFICE OF PETITIONS

In re Application of
Tim P. Horwood
Application No. 10/606,605
Filed: June 26, 2003
Attorney Docket No. HORWOOD.001C2

: DECISION GRANTING PETITION

This is a decision on the petition filed under 37 CFR 1.183 on December 6, 2004 to allow the petitioner to proceed with prosecution of the application without the signature of an inventor.

The petition is GRANTED.

The regulations require the signatures of all inventors of an application not being prosecuted by a registered practitioner, on all correspondences filed with the Office. In response to the Restriction Requirement mailed March 19, 2004, petitioner filed an election September 20, 2004 with a five month extension of time request, signed only by joint inventor and assignee Tim P. Horwood, however without the signature of joint inventor Keith W. Lovell. See 37.CFR 1.33 and M.P.E.P 403.

The facts presented on petition indicate that joint inventor John F. Pope assigned all right, title and interest in the instant patent application to joint inventor Tim P. Horwood, that the Attorney of Record withdrew as counsel and that joint inventors Tim P. Horwood and Keith W. Lovell have not been successful at reaching an agreement as to the prosecution of the instant application.

37 CFR 1.183 provides that, "In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in Section 1.17(f).

Based on petitioners' assertions that the petitioner, an inventor and assignee of one half interest in the above-identified application, has diligently sought cooperation from Keith W. Lovell, the second named inventor, in the prosecution of the instant application, but without success, it is determined therefore, for purposes of this decision only, that justice requires a waiver of the rules. In this instance, continued prosecution


Exhibit A

of the application should not be jeopardized because of the infighting of the principals and neither should any one of the principals be injured because of the refusal of the other principal.

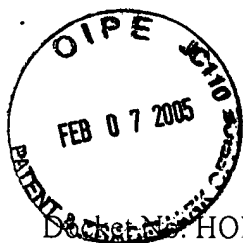
With respect to the petition fee, please be advised that effective November 22, 2004, the petition fee has been increased to \$400.00. Therein, deposit account no. 08-2624 has been charged in the amount of \$270.00 to make up the difference between that which was paid and that which is due pursuant to 37 CFR 1.17(f). See the Notice published in the Federal Register on September 21, 2004 and in the Official Gazette of the United States Patent and Trademark Office on October 12, 2004.

The application is being forwarded to Technology Center 3751 for further examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial 'P'.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions



Doc. No. HORWO-P3197

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Horwood et al.

Serial No.: 10/606,605

Art Unit: 3751

Filed: June 26, 2003

Examiner: Phillips, Charles E.

For: PORTABLE SPA

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

RESPONSE TO ELECTION REQUIREMENT

Sir:

This responds to the Examiner's election requirement of March 19, 2004.

As set forth in other documents being filed contemporaneously herewith, this response is being filed by inventor/assignee Horwood, due to the unavailability of his joint inventor/co-assignee Lovell.

The Examiner has indicated that the application contains claims directed to patentably distinct species of the claimed invention. However, the Examiner has not clearly identified each of the disclosed species (MPEP 809.02(a)) except by way of figure groupings 1 and 6. In other words, there is no detailed indication of a substantive basis for the aforementioned restriction. Applicant respectfully requests clarification in that regard, and reserves its rights to revise its election in view of any such clarification or upon further consideration of same.

Certificate of Express Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail Post Office to Addressee service mail, postage prepaid, in an envelope addressed to the Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date below.

Mark A. Pellegrini, Reg. No. 50,233

Express Mail Label No. EL483941668US

DATE

Exhibit B

In the absence of that further detail, and in an effort to advance the prosecution of this application, Applicant has reviewed the claims and hereby provisionally elects the species as disclosed in Figure 6. Applicant respectfully submits that the claims that read on that species appear to include at least Claims 17-18.

In addition to the above-indicated election, please amend Claim 17 of the above-identified application as indicated on the enclosed separate sheet. In this regard, Claims 1-18 were previously presented. Claims 1-16 have been withdrawn without prejudice, and Claim 17 has been amended. Thus, after entry of the present response, Claims 17-18 will be pending.

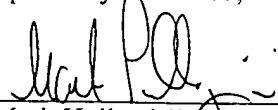
By the foregoing comments, Applicant has addressed the restriction requirement. In view of same, Applicant respectfully submits that the foregoing claims should be allowable, notice whereof is respectfully requested of the Examiner.

If the Examiner has any questions regarding the foregoing, or if the Examiner would like to discuss any remaining issues or new issues regarding this communication, the Examiner is invited to contact the undersigned representative of Applicant at (949) 718-6750.

Respectfully submitted,

Date:

Sept 20, 04


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Amendment to the Claims

1. (Withdrawn) A spa, comprising:
 - (a) a reservoir for holding water;
 - (b) an outer wall spaced outwardly from the reservoir;
 - (c) an equipment bay located in and accessible from an opening at the top portion of the spa between the outer wall and the reservoir, wherein the equipment bay contains substantially all of the equipment necessary for the operation of the spa; and
 - (d) a cover over the opening to the equipment bay that can be opened from the top portion of the spa to permit access to the equipment bay, free of any obstructions around the outer wall of the spa.
2. (Withdrawn) The spa of claim 1, further comprising a substantially horizontal coping that joins the reservoir to the outer wall, and wherein the opening to the equipment bay is provided in the coping.
3. (Withdrawn) The spa of claim 1, wherein the cover may be sealed to the opening in a substantially watertight manner.
4. (Withdrawn) The spa of claim 1, wherein the equipment for operating the spa includes a heater and a water pump.
5. (Withdrawn) The spa of claim 4, wherein the equipment for operating the spa includes a water filter comprising a filtration compartment normally flooded with water from the reservoir and filter cartridges for filtering impurities from the water.
6. (Withdrawn) The spa of claim 1, further comprising reinforcing means located between the outer wall and the reservoir for supporting the outer wall against deformation from external forces, whereby the spa can be installed below ground level and can withstand external forces from excavated ground applying pressure against the outer wall.
7. (Withdrawn) The spa of claim 6, wherein the reinforcing means comprises a plurality of internal support elements that resist lateral external forces against the outer wall.
8. (Withdrawn) The spa of claim 7, wherein the reinforcing means further comprises a dense foam material or other suitable filler.
9. (Withdrawn) The spa of claim 6, wherein the reinforcing means comprises a dense foam material or other suitable filler.
10. (Withdrawn) A spa, comprising:
 - (a) an inner wall defining a reservoir for holding water;
 - (b) an outer wall spaced from the inner wall, wherein the inner wall and the outer wall define a top surface that covers the space between the inner wall and the outer wall at an upper end of the spa, and wherein the outer wall includes a bottom surface constructed to contact the ground and support the spa; and a substantially vertical side wall extending from the bottom surface to the top surface;
 - (c) an equipment bay located in and accessible from an opening at the top surface of the spa between the inner wall and the outer wall that contains substantially all of the equipment for operating the spa, including a pump, a heater, a filter and control equipment; and
 - (d) a cover that covers the opening in the top surface of the spa, wherein the cover can be opened to permit access to the equipment in the equipment bay free of any obstructions around the vertical side wall of the spa.

11. (Withdrawn) The spa of claim 10, further comprising reinforcing means located between the outer wall and the inner wall for supporting the spa, including the outer wall and its associated side wall, against deformation from external forces, such that the spa can be installed below ground level and can withstand external subjacent forces from the ground surrounding and abutting the outer wall.
12. (Withdrawn) The spa of claim 11, wherein the reinforcing means comprises a plurality of internal support elements that structurally support the outer wall against external forces.
13. (Withdrawn) The spa of claim 12, wherein the support elements comprise elongated rigid supports having one end connected to an inner surface of the side wall and another end connected to an inner surface of the bottom wall.
14. (Withdrawn) The spa of claim 11, wherein the reinforcing means comprises a framework substantially supporting the outer wall, including a plurality of horizontal bottom support elements, a plurality of horizontal top support elements, a plurality of vertical support elements connecting the bottom support elements to the top support elements, and a plurality of bracing elements connected at an angle between the vertical support elements and the horizontal bottom elements.
15. (Withdrawn) The spa of claim 14, wherein the framework is comprised of pressure treated wood.
16. (Withdrawn) A spa, comprising:
- (a) a reservoir for holding water;
 - (b) a vertical outer wall surrounding the reservoir;
 - (c) an equipment bay located in and accessible from an opening at a top portion of the spa between the outer wall and the reservoir, wherein the equipment bay contains substantially all of the equipment necessary for the operation of the spa;
 - (d) a cover over the opening to the equipment bay that can be opened to permit access to the equipment in the equipment bay, wherein the cover is removable free of any obstructions around the perimeter of the outer wall; and
 - (e) reinforcing means located between the outer wall and the reservoir for supporting the outer wall against deformation from external forces, such that the spa can be installed above ground or below ground level and can withstand subjacent external forces from the ground exerted against the outer wall.
17. (Currently Amended) A spa, comprising:
- (a) a reservoir for holding water;
 - (b) an outer wall spaced outwardly from the reservoir;
 - (c) an equipment bay located between the outer wall and the reservoir, wherein the equipment bay ~~that~~ contains substantially all of the equipment necessary for the operation of the spa; and
 - (d) reinforcing means located between the outer wall and the reservoir for supporting the outer wall against deformation from external forces, such that the spa can be installed above ground level or below ground level and can withstand subjacent external forces from the ground exerted against the outer wall.
18. (Original) The spa of claim 17, further comprising
- (a) an opening in the outer wall at a side of the spa through which the equipment in the equipment bay can be accessed;

(b) a cover over the opening to the equipment bay that can be opened to permit access to the equipment; and

(c) a shield over the opening at the side of the spa that can withstand deformation from external forces from the ground exerted against the shield, wherein the shield is spaced from the opening such that the spa can be installed below ground level and the equipment bay can be accessed by opening the cover.